

**Shulman Air Freight, Inc.; James L. Garrity, Trustee in Bankruptcy and Miscellaneous Warehousemen, Drivers & Helpers, Local 986, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case 31-CA-8274**

April 27, 1981

### DECISION AND ORDER

On March 27, 1980, the National Labor Relations Board issued an Order adopting, in the absence of exceptions, the Decision of Administrative Law Judge Roger B. Holmes directing Respondent Shulman Air Freight, Inc., to make whole its employees for any loss of pay or other benefits they may have suffered by reason of Respondent's discrimination against them. The Order also directs Respondent Shulman to pay to the Charging Party the money deducted from its employees' earnings as their union dues for the month of July 1978. On July 21, 1978, Respondent Shulman ceased doing business and on November 17, 1978, it was declared bankrupt. Respondent James L. Garrity was appointed Trustee in Bankruptcy. A controversy having arisen over the amount of backpay due under the terms of the Board's Order, the Regional Director for Region 31, on July 16, 1980, issued and duly served on the parties a backpay specification and notice of hearing setting forth certain allegations with respect to the amount of backpay due the discriminatees and with respect to the amount due the Charging Party for dues withheld but not transmitted. Respondents failed to file an answer to the specification.

On January 7, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. An erratum to the motion was filed on January 12, 1981. The Board, on January 23, 1981, issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondents failed to file a response to the Notice To Show Cause, and the allegations of the Motion for Summary Judgment stand uncontroverted.

Upon the entire record in this proceeding, the Board makes the following:

#### Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations, Series 8, as amended, provides, in pertinent part, as follows:

(a) . . . the respondent shall, within 15 days from the service of the specification, if any, file an answer thereto . . . .

\* \* \* \* \*

(c) . . . If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate.

The backpay specification, issued on July 16, 1980, and served that date on Respondents by certified mail, states that Respondents shall, within 15 days from the date of the specification, file an answer to the specification with the Regional Director for Region 31, and that, if the answer fails to deny the allegations of the specification in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and Respondents shall be precluded from introducing any evidence controverting them.

According to the uncontroverted allegations of the Motion for Summary Judgment, after the time for filing an answer had expired, counsel for the General Counsel advised Respondent's counsel that no answer had been filed and that counsel for the General Counsel intended to move for summary judgment. As of January 7, 1981, the date of the Motion for Summary Judgment, Respondents had not filed an answer to the specification nor had they requested an extension of time to file. Respondents also failed to file a response to the Notice To Show Cause. As Respondents have not filed an answer, or offered a satisfactory explanation for their failure to do so, the allegations of the specification are, in accordance with the rules set forth herein, found to be true by the Board.

Accordingly, on the basis of the allegations of the specification which are accepted as true, the Board finds the facts as set forth therein, concludes that the net backpay due each discriminatee is as stated in the computation of the specification, and hereinafter orders that payment thereof be made by Respondents to each discriminatee named below. The Board further concludes that the amount due the Charging Party is as stated in the specification and hereinafter orders that payment thereof be made by Respondents to the Charging Party.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, Shulman Air Freight, Inc., Los Angeles, California, its officers, agents, successors, and assigns; and James L. Garrity, Trustee in Bankruptcy, shall make whole each of the discriminatees named below by payment to each of them of the amount set forth adjacent to his or her name, plus interest to be computed in the manner prescribed by the Board in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977),<sup>1</sup> until all backpay due is paid, less the tax withholdings required by Federal and state laws:

Carol Ammons	\$ 312.00
Sandra Barrack	312.00
Peter Bernard	501.98
Nancy Bouthell	437.13

<sup>1</sup> In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

Joe Faltz	446.10
Ernest Iguchi	354.68
Gordon Jew	314.10
James Larson	345.95
Dennis Millette	452.45
Diane Mosseid	341.10
Masa Naito	341.10
Kenny Nakagawa	471.08
Wesley Nakamoto	341.10
Joan Palladine	387.66
M. M. Russac	409.00
Maxine Shack	341.10
Linda Shitara	170.55
Charles Tonari	485.47
Ramona Villalobos	170.55
Rose Vineyard	341.10

The Board further orders that Respondents shall remit to the Charging Party the amount of \$830 together with interest calculated in the manner prescribed in *Florida Steel Corporation, supra*.<sup>2</sup>

<sup>2</sup> *J. F. Swick Insulation Co., Inc.*, 247 NLRB 626 (1980).